

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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In re:

PROMESA  
Title III

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO, *et al.* (Jointly Administered)

Debtors.<sup>1</sup>

-----X

In re:

PROMESA  
Title III

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3567-LTS

PUERTO RICO HIGHWAYS AND  
TRANSPORTATION AUTHORITY (“HTA”),

Debtor.

-----X

PEAJE INVESTMENTS LLC,

Plaintiff,

Adv. Proc. No. 17-151-LTS in 17  
BK 3567-LTS

-v-

PUERTO RICO HIGHWAYS AND  
TRANSPORTATION AUTHORITY, *et al.*

Adv. Proc. No. 17-152-LTS in 17  
BK 3283-LTS

Defendants.

-----X

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); and (ii) Puerto Rico Highways and Transportation Authority (“PRHTA” or “HTA”) (Bankruptcy Case No. 17 BK 3567) (Last Four Digits of Federal Tax ID: 3808).

**URGENT MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL**

**To the Honorable United States District Court Judge Laura Taylor Swain:**

The Commonwealth of Puerto Rico (the “Commonwealth”) and the Puerto Rico Highways & Transportation Authority (“HTA” or “PRHTA”) (collectively, the “Debtors” and each, a “Debtor”), by and through the Financial Oversight and Management Board for Puerto Rico (the “FOMB”), as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),<sup>2</sup> the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) and AAFAF’s executive director the Hon. Gerardo Portela Franco (in his official capacity), the Hon. Ricardo Antonio Rosselló Nevares (in his official capacity), the Hon. Carlos Contreras Aponte (in his official capacity), the Hon. Raúl Maldonado Gautier (in his official capacity), and the Hon. José Iván Marrero Rosado (in his official capacity) (together, the “Non-Debtor Defendant Movants”) (with Debtors, collectively, “Defendants”), hereby move this Court for an order permitting Defendants (1) to publicly file redacted versions of Defendants’ opposition brief to Plaintiff Peaje Investments LLC’s (“Plaintiff” or “Peaje”) Motion (A) for Temporary Restraining Order and Preliminary Injunction, and (B) for Relief from Stay or, alternatively, Adequate Protection (“Defendants Opposition”) and the declarations of Mr. Duvall, Mr. Arnold, and Mr. Gonzalez and any accompanying exhibits which contain confidential information, and to file unredacted versions of these documents under seal; and (2) to file under seal excerpts from the depositions of Mr. Gabriel Schwartz and Mr. Thomas Stanford.

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<sup>2</sup> PROMESA has been codified in 48 U.S.C. §§ 2101-2241.

### **Jurisdiction and Venue**

1. The United States District Court for the District of Puerto Rico (the “Court”) has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).
2. Venue is proper pursuant to PROMESA section 307(a).

### **Relief Requested**

3. Pursuant to the Court’s Scheduling Order, Dkt. 56, 17-00151-LTS, Dkt. 45, 17-00152-LTS, Defendants’ Opposition is due this Friday, July 14, 2017. Declarations containing Defendants’ fact and expert witness’ direct testimony are likewise due this Friday, July 14, 2017.

4. On July 12, 2017, this Court entered the parties’ Stipulated Protective Order. Dkt. 91, Case No. 17-00151-LTS; Dkt. 83, Case No. 17-00152-LTS. Paragraph 16 of this order permits the parties to file a motion for leave to file material under seal.

5. Defendants presently intend to file a declaration submitted by Tyler Duvall, one of Defendants’ experts, which discusses, and includes in an exhibit, certain confidential, non-public HTA financial information. HTA has provided this financial information to Mr. Duvall for use in connection with this case, provided that such information be filed under seal and remain subject to the parties’ Stipulated Protective Order until such time as that information becomes publicly available. Defendants presently anticipate that this currently confidential, non-public financial information will be publicly disclosed by no later than the evidentiary hearing on August 8. Once this information has been publicly disclosed, the Defendants will request that this Court make Mr. Duvall’s full declaration available on the public docket.

6. Defendants also intend to file a declaration submitted by Sergio L. Gonzalez, Defendants’ fact witness, which relies on certain of the same confidential, non-public financial information provided by HTA. Once this information has been publicly disclosed, the

Defendants will request that this Court make Mr. Gonzalez's full declaration available on the public docket.

7. Defendants also intend to file a declaration submitted by Jonathan Arnold, one of Defendants' experts, which discusses, and in some instances quotes to, the deposition of Plaintiff's witness, Mr. Thomas Stanford, which transcript has been designated as confidential by Plaintiff pursuant to the Stipulated Protective Order, and Plaintiff has requested that it be filed under seal. If and when this information has been publicly disclosed, the Defendants will request that this Court make Mr. Arnold's full declaration available on the public docket.

8. Defendants also intend to submit excerpts from the depositions of Plaintiff's witnesses, Mr. Gabriel Schwartz and Mr. Thomas Stanford. Both transcripts have been designated as confidential by Plaintiff pursuant to the Stipulated Protective Order, and Plaintiff has requested that they be filed under seal.

9. Defendants' Opposition makes reference to the declarations submitted by Mr. Duvall, Mr. Arnold, and Mr. Gonzalez, and the confidential information contained therein, as well as the depositions of Mr. Schwartz and Mr. Stanford.

10. Pursuant to Local Bankruptcy Rule 9018-1 and paragraph 16 of the Stipulated Protective Order (Dkt. 91, Case No. 17-00151-LTS; Dkt. 83, Case No. 17-00152-LTS), Defendants request the Court grant leave for Defendants to publicly file Defendants' Opposition and the declarations of Mr. Duvall, Mr. Arnold, and Mr. Gonzalez with confidential information redacted, and to file unredacted versions of these documents under seal. Notwithstanding the general presumption of public access to court records, the Court has the authority to enter an order "requiring that ... confidential ... commercial information not be revealed...." Fed. R. Civ. P. 26(c)(1)(G); *see also New York v. Actavis, PLC*, No. 14-cv-7473, 2014 WL 5353774, at

\*3(S.D.N.Y. Oct. 21, 2014) (“Internal documents and unpublished drafts that contain non-public strategies and financial information constitute ‘confidential commercial information’ under Federal Rule 26(c)(1)(g)...”); *Louis Vuitton Malletier S.A. v. Sunny Merchandise Corp.*, 97 F. Supp. 3d 485, 510-511 (S.D.N.Y. 2015) (granting leave to redact and file under seal “confidential business information,” including “internal business documents, financial information about both Sunny and particular individuals, investigative reports, and information about Sunny’s business operations.”).

11. With respect to any exhibits to these declarations which contain confidential information, Defendants request that the Court grant leave to publicly file these documents with confidential information redacted, and to file unredacted versions of them under seal. Defendants anticipate that at least one of the exhibits to these declarations may need to be filed under seal in its entirety.

12. With respect to the excerpts from the depositions of Mr. Schwartz and Mr. Stanford, Defendants request that the Court grant leave to file these transcripts under seal.

13. The sealed, unredacted versions of all documents will be made available to the Court, as well as to the following counsel for parties in this case who have agreed to be bound by the protective order:

Hermann D. Bauer  
USDC No. 215205  
**O’NEILL & BORGES LLC**  
250 Muñoz Rivera Ave., Suite 800  
San Juan, PR 00918-1813  
Tel: (787) 764-8181  
Fax: (787) 753-8944  
Email: hermann.bauer@oneillborges.com

Martin J. Bienenstock (*pro hac vice*)  
Stephen L. Ratner (*pro hac vice*)

Timothy W. Mungovan (*pro hac vice*)

Bradley R. Bobroff (*pro hac vice*)

**PROSKAUER ROSE LLP**

Eleven Times Square

New York, NY 10036

Tel: (212) 969-3000

Fax: (212) 969-2900

Email: mbienenstock@proskauer.com

sratner@proskauer.com

tmungovan@proskauer.com

bbobroff@proskauer.com

Michael A. Firestein (*pro hac vice* pending)

Lary Alan Rappaport (*pro hac vice*)

**PROSKAUER ROSE LLP**

2049 Century Park East

32nd Floor

Los Angeles, CA 90067-3206

Tel: (310) 557-2900

Fax: (310) 557-2193

Email: mfirestein@proskauer.com

lrappaport@proskauer.com

John J. Rapisardi

Suzanne Uhland

Peter Friedman

(Admitted *Pro Hac Vice*)

**O'MELVENY & MYERS LLP**

7 Times Square

New York, NY 10036

Tel: (212) 326-2000

Fax: (212) 326-2061

Email: jrapisardi@omm.com

suhland@omm.com

pfriedman@omm.com

-and-

Elizabeth L. McKeen

(Admitted *Pro Hac Vice*)

610 Newport Center Drive, 17th Floor

Newport Beach, CA 92660

Tel: +1-949-823-6900  
Fax: +1-949-823-6994  
Email: emckeen@omm.com

Andrés W. López  
PR-USDC No. 215311  
**THE LAW OFFICES OF ANDRÉS W. LÓPEZ, P.S.C.**  
902 Fernández Juncos Ave.  
San Juan, PR 00907  
Tel: (787) 294-9508  
Fax: (787) 294-9519

Wandymar Burgos Vargas  
PR-USDC No. 223502  
Deputy Secretary in Litigation  
Department of Justice  
P.O. Box 9020192  
San Juan, Puerto Rico 00902-0192  
Tel: 787-721-2940  
Fax: 787-723-9188  
wburgos@justicia.pr.gov

Raul Castellanos  
PR-USDC No. 214611  
Development & Construction Law Group LLC  
PMB 443, Suite 112  
100 Grand Paseos Boulevard  
San Juan, Puerto Rico 00926  
Tel: (+1) 787.403.2757  
Fax: (+1) 888.500.1827  
rcastellanos@devconlaw.com

Dora L. Monserrate Peñagaricano  
**Monsserrate Simonet & Gierbolini, LLC**  
USDC-PR No. 212612  
101 San Patricio Avenue  
Maramar Plaza, Suite 1120  
Guaynabo, Puerto Rico 00968  
Phone: (787) 620-5300  
Fax: (787) 620-5305

Allan S. Brilliant  
Robert J. Jossen

Andrew C. Harmeyer  
**Dechert LLP**  
1095 Avenue of the Americas  
New York, New York 10036

-and-

G. Eric Brunstad, Jr.  
90 State House Square  
Hartford, Connecticut 06103  
-and-

Stuart T. Steinberg  
Cira Centre  
2929 Arch Street  
Philadelphia, Pennsylvania 19104

**Certification in Compliance with the First Amended Case Management Procedures and  
Local Rule 9013-1**

14. Pursuant to Local Rule 9013-1 and paragraph I.H of the First Amended Case Management Procedures, Defendants hereby certify that they have (a) carefully examined the matter and concluded that there is a true need for an urgent hearing; (b) not created the urgency through any lack of due diligence; (c) made a bona fide effort to resolve the matter without a hearing; (d) made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court; and (e) counsel for Defendants have conferred with counsel for Plaintiff, and Plaintiff does not oppose the relief requested herein.

WHEREFORE Defendants respectfully request that the Court enter an order permitting them to file certain materials under seal.

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Dated: July 14, 2017  
San Juan, Puerto Rico

S/Hermann D. Bauer

Hermann D. Bauer  
USDC No. 215205  
**O'NEILL & BORGES LLC**  
250 Muñoz Rivera Ave., Suite 800  
San Juan, PR 00918-1813  
Tel: (787) 764-8181  
Fax: (787) 753-8944  
Email: hermann.bauer@oneillborges.com

S/Timothy W. Mungovan

Martin J. Bienenstock (*pro hac vice*)  
Stephen L. Ratner (*pro hac vice*)  
Bradley R. Bobroff (*pro hac vice*)  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, NY 10036  
Tel: (212) 969-3000  
Fax: (212) 969-2900  
Email: tmungovan@proskauer.com  
mbienenstock@proskauer.com  
sratner@proskauer.com  
bbobroff@proskauer.com

Michael A. Firestein (*pro hac vice* pending)

Lary Alan Rappaport (*pro hac vice*)

**PROSKAUER ROSE LLP**

2049 Century Park East  
32nd Floor  
Los Angeles, CA 90067-3206  
Tel: (310) 557-2900  
Fax: (310) 557-2193  
Email: mfirestein@proskauer.com  
lrappaport@proskauer.com

*Attorneys for The Financial Oversight and  
Management Board for Puerto Rico, and The  
Financial Oversight and Management Board  
for Puerto Rico as representative of The  
Commonwealth of Puerto Rico*

By: S/Peter Friedman  
John J. Rapisardi  
Suzanne Uhland  
Peter Friedman  
(Admitted *Pro Hac Vice*)  
**O'MELVENY & MYERS LLP**  
7 Times Square  
New York, NY 10036  
Tel: (212) 326-2000  
Fax: (212) 326-2061  
Email: jrapisardi@omm.com  
suhland@omm.com  
pfriedman@omm.com

-and-

Elizabeth L. McKeen  
(Admitted *Pro Hac Vice*)  
610 Newport Center Drive, 17th Floor  
Newport Beach, CA 92660  
Tel: +1-949-823-6900  
Fax: +1-949-823-6994  
Email: emckeen@omm.com

*Attorneys for the Puerto Rico Fiscal Agency  
and Financial Advisory Authority and  
Gerardo Portela Franco*

By: /s/ Andres W. López  
Andrés W. López  
PR-USDC No. 215311  
**THE LAW OFFICES OF ANDRÉS W.  
LÓPEZ, P.S.C.**  
902 Fernández Juncos Ave.  
San Juan, PR 00907  
Tel: (787) 294-9508  
Fax: (787) 294-9519

*Co-Attorneys for the Puerto Rico Fiscal  
Agency and Financial Advisory Authority and  
Gerardo Portela Franco*

Respectfully submitted,

WANDA VÁZQUEZ GARCED  
Secretary of Justice

By: /s/ Wandymar Bugos Vargas  
Wandymar Burgos Vargas  
PR-USDC No. 223502  
Deputy Secretary in Litigation  
Department of Justice  
P.O. Box 9020192  
San Juan, Puerto Rico 00902-0192  
Tel: 787-721-2940  
Fax: 787-723-9188  
wburgos@justicia.pr.gov

*Attorney for Hon. Ricardo Antonio Rosselló  
Nevares, Hon. Raúl Maldonado Gautier, and  
Hon. José Iván Marrero Rosado*

Respectfully submitted,

By: /s/ Raul Castellanos  
Raul Castellanos  
PR-USDC No. 214611  
Development & Construction Law Group  
LLC  
PMB 443, Suite 112  
100 Grand Paseos Boulevard  
San Juan, Puerto Rico 00926  
Tel: (+1) 787.403.2757  
Fax: (+1) 888.500.1827  
rcastellanos@devconlaw.com

*Attorney for Hon. Carlos Contreras Aponte*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer  
Hermann D. Bauer

**Exhibit A**

**Proposed Order**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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In re: PROMESA  
Title III  
  
THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,  
  
as representative of No. 17 BK 3283-LTS  
  
THE COMMONWEALTH OF PUERTO RICO, *et al.* (Jointly Administered)  
  
Debtors.<sup>1</sup>

-----X

In re: PROMESA  
Title III  
  
THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,  
  
as representative of  
  
PUERTO RICO HIGHWAYS AND No. 17 BK 3567-LTS  
TRANSPORTATION AUTHORITY (“HTA”),  
  
Debtor.

-----X

PEAJE INVESTMENTS LLC,  
  
Plaintiff, Adv. Proc. No. 17-151-LTS in 17  
BK 3567-LTS

-v-

PUERTO RICO HIGHWAYS AND  
TRANSPORTATION AUTHORITY, *et al.* Adv. Proc. No. 17-152-LTS in 17  
BK 3283-LTS  
  
Defendants.

-----X

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); and (ii) Puerto Rico Highways and Transportation Authority (“PRHTA” or “HTA”) (Bankruptcy Case No. 17 BK 3567) (Last Four Digits of Federal Tax ID: 3808).

**ORDER ON URGENT MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL**

Upon consideration of the urgent motion (the “Urgent Motion”) of the Commonwealth of Puerto Rico (the “Commonwealth”) and the Puerto Rico Highways & Transportation Authority (“HTA” or “PRHTA”) (collectively, the “Debtors” and each, a “Debtor”), by and through the Financial Oversight and Management Board for Puerto Rico (the “FOMB”), as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),<sup>2</sup> the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) and AAFAF’s executive director Gerardo Portela Franco (in his official capacity) (together, the “AAFAF Movants”) (with Debtors, collectively, “Defendants”), for an order permitting Defendant (1) to publicly file redacted versions of Defendants’ opposition brief to Plaintiff Peaje Investments LLC’s (“Plaintiff” or “Peaje”) Motion (A) for Temporary Restraining Order and Preliminary Injunction, and (B) for Relief from Stay or, alternatively, Adequate Protection (“Defendants Opposition”) and the declarations of Mr. Duvall, Mr. Arnold, and Mr. Gonzalez and any accompanying exhibits which contain confidential information , and to file unredacted versions of these documents under seal; and (2) to file under seal excerpts from the depositions of Mr. Gabriel Schwartz and Mr. Thomas Stanford; and it appearing that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 48 U.S.C. § 2166(a), (ii) that venue of this proceeding and the Joint Urgent Motion is proper under 28 U.S.C. § 1391(b) and 48 U.S.C. § 2167(a); (iii) that notice of the Joint Urgent Motion was adequate and proper under the circumstances and that no further or other notice need be given; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

1. The Urgent Motion is GRANTED as set forth herein.

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<sup>2</sup> PROMESA has been codified in 48 U.S.C. §§ 2101-2241.

2. Defendants are permitted to publicly file redacted versions of Defendants' Opposition and the declarations of Mr. Duvall, Mr. Arnold, and Mr. Gonzalez and any accompanying exhibits with confidential information, and to file unredacted versions of these documents under seal.
3. Defendants are permitted to file under seal excerpts from the depositions of Mr. Gabriel Schwartz and Mr. Thomas Stanford.
4. The Court, as well as to the following counsel for parties in this case who have agreed to be bound by the protective order, shall have access to the unredacted versions of all documents filed under seal:

Hermann D. Bauer  
USDC No. 215205  
**O'NEILL & BORGES LLC**  
250 Muñoz Rivera Ave., Suite 800  
San Juan, PR 00918-1813  
Tel: (787) 764-8181  
Fax: (787) 753-8944  
Email: hermann.bauer@oneillborges.com

Martin J. Bienenstock (*pro hac vice*)  
Stephen L. Ratner (*pro hac vice*)  
Timothy W. Mungovan (*pro hac vice*)  
Bradley R. Bobroff (*pro hac vice*)  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, NY 10036  
Tel: (212) 969-3000  
Fax: (212) 969-2900  
Email: mbienenstock@proskauer.com  
sratner@proskauer.com  
tmungovan@proskauer.com  
bbobroff@proskauer.com

Michael A. Firestein (*pro hac vice* pending)  
Lary Alan Rappaport (*pro hac vice*)  
**PROSKAUER ROSE LLP**



2049 Century Park East  
32nd Floor  
Los Angeles, CA 90067-3206  
Tel: (310) 557-2900  
Fax: (310) 557-2193  
Email: mfirestein@proskauer.com  
lrappaport@proskauer.com

John J. Rapisardi  
Suzanne Uhland  
Peter Friedman  
(Admitted *Pro Hac Vice*)  
**O'MELVENY & MYERS LLP**  
7 Times Square  
New York, NY 10036  
Tel: (212) 326-2000  
Fax: (212) 326-2061  
Email: jrapisardi@omm.com  
suhland@omm.com  
pfriedman@omm.com

-and-

Elizabeth L. McKeen  
(Admitted *Pro Hac Vice*)  
610 Newport Center Drive, 17th Floor  
Newport Beach, CA 92660  
Tel: +1-949-823-6900  
Fax: +1-949-823-6994  
Email: emckeen@omm.com

Andrés W. López  
PR-USDC No. 215311  
**THE LAW OFFICES OF ANDRÉS W. LÓPEZ, P.S.C.**  
902 Fernández Juncos Ave.  
San Juan, PR 00907  
Tel: (787) 294-9508  
Fax: (787) 294-9519

Wandymar Burgos Vargas  
PR-USDC No. 223502  
Deputy Secretary in Litigation

Department of Justice  
P.O. Box 9020192  
San Juan, Puerto Rico 00902-0192  
Tel: 787-721-2940  
Fax: 787-723-9188  
wburgos@justicia.pr.gov

Raul Castellanos  
PR-USDC No. 214611  
Development & Construction Law Group LLC  
PMB 443, Suite 112  
100 Grand Paseos Boulevard  
San Juan, Puerto Rico 00926  
Tel: (+1) 787.403.2757  
Fax: (+1) 888.500.1827  
rcastellanos@devconlaw.com

Dora L. Monserrate Peñagaricano  
**Monserate Simonet & Gierbolini, LLC**  
USDC-PR No. 212612  
101 San Patricio Avenue  
Maramar Plaza, Suite 1120  
Guaynabo, Puerto Rico 00968  
Phone: (787) 620-5300  
Fax: (787) 620-5305

Allan S. Brilliant  
Robert J. Jossen  
Andrew C. Harmeyer  
**Dechert LLP**  
1095 Avenue of the Americas  
New York, New York 10036

-and-

G. Eric Brunstad, Jr.  
90 State House Square  
Hartford, Connecticut 06103  
-and-

Stuart T. Steinberg  
Cira Centre  
2929 Arch Street  
Philadelphia, Pennsylvania 19104

5. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: \_\_\_\_\_  
San Juan, Puerto Rico

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UNITED STATES DISTRICT JUDGE